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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

KRIKOR KARAMANOUKIAN et al., Plaintiffs and Appellants, v. UNITED FINANCIAL CASUALTY COMPANY, Defendant and Respondent.	B243883 (Los Angeles County Super. Ct. No. BC475501)

APPEAL from a judgment of the Superior Court of Los Angeles County, William F. Fahey, Judge. Affirmed.

Law Offices of Eric Bryan Seuthe & Associates and Eric Bryan Seuthe for Plaintiffs and Appellants.

Law Offices of Julia Azrael, Julia Azrael and John S. Curtis for Defendant and Respondent.

Plaintiffs and appellants Krikor and Alber Karamanoukian[1] appeal from a judgment following an order granting summary judgment in favor of defendant and respondent Progressive Insurance[2] (Insurer) in this bad faith insurance action. The Karamanoukians contend Insurer acted in bad faith by declining to provide a transcript of a previously recorded statement which excused them from providing examinations under oath (EUOs). We conclude Insurer was not required to provide a transcript and the request for EUOs were reasonable under the circumstances of this case. The Karamanoukians' failure to comply with the policy requirement to submit to an EUO foreclosed them from obtaining benefits under the policy. Therefore, we affirm the judgment.

FACTS

Insurer issued a policy to Alber covering a 2010 Mercedes Benz E350. The policy required the insured to provide claim information as follows: "You, or any other person or organization claiming coverage as an insured must . . . allow us to take signed and recorded statements, including sworn statements and examinations under oath, and answer all reasonable questions we may ask as often as we may reasonably require."

On November 1, 2011, Alber's son Krikor called Insurer to report damage to the car and spoke to adjustor Deanna Wong, who told him that the conversation was being recorded. Krikor explained he had parked the car in Westwood, near the intersection of Ophir and Kelton at 6:00 p.m. the previous night. When he returned at 11:00 p.m., he found the car had been "egged," beaten, dented, and was not drivable. Krikor called UCLA campus police to report the damage, and the police took pictures. He was not

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[1] Because more than one party shares the last name Karamanoukian, they will be referred to individually by their first names for ease of reference. No disrespect is intended.

[2] According to Insurer's brief, the correct name of defendant is United Financial Casualty Company.

aware of any witnesses or suspects. Krikor said that he had the car towed to a repair shop.

Insurer's inspector examined the car at the repair shop. Because the damage was suspiciously severe and very similar to a prior loss, the inspector referred the claim to Insurer's Special Investigation Unit (SIU). SIU inspector Rich Hougardy inspected the car. He concluded the potential repair costs made the vehicle a borderline total loss. A thorough review of the car's history showed two prior losses. He recommended an accident reconstruction expert examine the car. Hougardy obtained a copy of the report prepared by the UCLA campus police and viewed the location where the car was damaged.

Hougardy spoke with Krikor for details about where the car had been parked and arranged to meet with Krikor on November 16, 2011. He wanted to ask about the car's precise location on the night it was damaged, why Krikor had been visiting that area, if the alarm was activated, and if Krikor had heard anything unusual. However, on November 15, 2011, Krikor was unable to provide a statement in person.

On November 16, 2011, Insurer received a letter from Attorney Eric Bryan Seuthe stating that he represented the Karamanoukians and "will be deferring any request for a statement of my client." A claim representative for Insurer left a message for Seuthe seeking a signed authorization for an accident reconstruction expert to inspect the vehicle. Seuthe returned the call on November 17, 2011, and told the adjuster he thought Insurer was acting in bad faith because his clients had told him there were many acts of vandalism in the area that night. He demanded a letter confirming the reason for the investigation. At that point, Insurer transferred handling responsibility to a litigation adjuster, Nathan Cox.

Insurer did not discover any other reported vandalism claim in the area on the evening of October 31, 2011. Cox told Seuthe that Insurer needed additional statements from the Karamanoukians to obtain more detailed information about the facts of the loss. Seuthe stated there would be "no additional statements given, period," and he would be filing a bad faith claim immediately. On November 18, 2011, Cox sent a reservation of

rights letter to Seuthe, requiring, among other things, a supplemental and in-person statement from Krikor (initialed), and an in-person statement from Alber. Cox learned that Krikor had driven the Mercedes to the shop. The damage shown in the photos of the car appeared inconsistent with vandalism. Cox wanted to clarify these topics with the Karamanoukians during their meetings.

On November 22, 2011, Seuthe wrote a letter to Cox requesting a copy of the statement taken by Wong from Krikor. Cox declined to provide a copy and promised to give one after Insurer had made a decision about coverage. Seuthe requested a copy again on November 27, 2011, threatening to institute bad faith litigation. Cox refused.

On December 13, 2011, Cox sent a letter to Seuthe stating: "Due to your expressed position that you will not allow your clients to cooperate with the requested statement, we will be referring this claim over to our attorney, Teresa Starinieri, in order to have an Examination Under Oath completed." On December 19, 2011, Starinieri wrote to Seuthe that she had been retained to take the EUOs. She noted that EUOs were a prerequisite to coverage under the insurance policy and cited *Brizuela v. CalFarm Ins. Co.* (2004) 116 Cal.App.4th 578, 587 (*Brizuela*).

PROCEDURAL HISTORY

On December 19, 2011, the Karamanoukians filed suit against Insurer asserting four causes of action: 1) breach of good faith and fair dealing; 2) fraud; 3) intentional misrepresentation; and 4) negligent misrepresentation. Insurer filed an answer on January 26, 2012. Insurer filed a motion for summary judgment on March 1, 2012. On May 29, 2012, the Karamanoukians opposed the motion for summary judgment. On June 7, 2012, Insurer filed a reply and objections to the Karamanoukians' evidence. The Karamanoukians responded to the objections.

A hearing was held on June 12, 2012. The trial court granted summary judgment for Insurer on both procedural and substantive grounds. The court highlighted the Karamanoukians' failure to include a table of contents and a table of authorities, and the

use of a generic responsive statement as procedural defects. The court also noted that the Karamanoukians failed to deal with the dispositive case of *Brizuela, supra,* 116 Cal.App.4th 578 or with the second, third, or fourth causes of action. The court entered an order granting summary judgment in favor of Insurer and a judgment of dismissal on June 28, 2012.

The Karamanoukians filed a motion for a new trial, which the trial court denied on August 23, 2012. On September 12, 2012, the Karamanoukians filed a timely notice of appeal.

DISCUSSION

Standard of Review

The standard of review when evaluating the propriety of a grant of summary judgment is *de novo*. (*Zavala v. Arce* (1997) 58 Cal.App.4th 915, 925.)

Bad Faith Claim

The Karamanoukians contend Insurer acted in bad faith by declining to provide a transcript of Krikor's previously recorded statement upon request, which exposes Insurer to liability for breach of contract and justifies the Karamanoukians' refusal to provide EUOs. We disagree.

"An insured's compliance with a policy requirement to submit to an examination under oath is a prerequisite to the right to receive benefits under the policy." (*Brizuela, supra,* 116 Cal.App.4th at p. 587.) "If the insured cannot bring himself within the terms and conditions of the policy he cannot recover. . . . If it appears that the contract has been violated [by the insured], and thus terminated . . . , he cannot recover. He seeks to recover by reason of a contract, and he must show that he has complied with such contract on his part [in order to recover]." (*Hickman v. London Assurance Corp.* (1920) 184 Cal. 524,

534.) An insurer does not have a legal obligation to provide an insured with a copy of the insured's previously recorded statements taken before a civil action has been filed and discovery commenced. (See *Brizuela, supra,* at p. 589.)

Insurer was not required under the terms of the policy or by law to provide the Karamanoukians with a copy of Krikor's previously recorded statement before taking their EUOs. Therefore, Insurer's refusal to provide a copy was not a breach of the covenant of good faith and fair dealing.

Undermining Krikor's allegation that Insurer acted in bad faith is the principle that: "The right to require the insured to submit to an examination under oath concerning all proper subjects of inquiry is reasonable as a matter of law." (*Globe Indemnity Co. v. Superior Court* (1992) 6 Cal.App.4th 725, 731.) The reasons for which Insurer required an EUO would have served to advance their inquiry into the damage to Krikor's car and Krikor's insurance claim. Since these are "proper subjects of inquiry," we necessarily conclude that Insurer was within its right to order an EUO and not acting in bad faith.

The Karamanoukians contend there is a triable issue of fact as to whether Insurer had a reasonable basis for requesting further statements. They argue that the EUOs were not reasonably required to investigate the claim because Insurer had all the information it needed. This contention is unpersuasive, because there was ample further information Insurer reasonably required to evaluate the claim but did not already have. For example, the Karamanoukians' attorney purported to know about other incidents of vandalism from his clients. Since Insurer was not able to locate a report of other vandalism, Insurer presumably wanted to know what other incidents the Karamanoukians knew about so that it could follow up. Insurer also wanted to ask about previous repairs. Ultimately, Insurer was investigating the claim and required further information from the Karamanoukians to conclude its investigation, a process that very well could have led to the fulfillment of the insurance contract. The Karamanoukians never told Insurer that it had all the information it needed and EUOs were unnecessary. Since the requests for statements were reasonable under the circumstances of this case, this case falls squarely within the purview of *Brizuela,* and Insurer was therefore entitled to judgment as a matter of law.

On appeal, the Karamanoukians contend two statements from their attorney's declaration should not have been excluded: 1) "The only reason that supplemental statements, etc., were not provided was because [Cox] refused to turn over a copy of Krikor's statement of November 1, 2001 [*sic*]." and 2) "Because the only ground on which plaintiffs refused to give further statements has now been removed, plaintiffs are willing and able to provide further statements, etc. I have so advised defense counsel that my clients are now willing to proceed with further statements, etc." Even if the trial court had admitted these statements, it would not change our analysis of this issue.

Based on our conclusion that the judgment should be affirmed on the merits, we need not address whether the judgment could also be affirmed on procedural grounds.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to United Financial Casualty Company.

KRIEGLER, J.

We concur:

MOSK, Acting P. J.

KUMAR, J.*

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* Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.